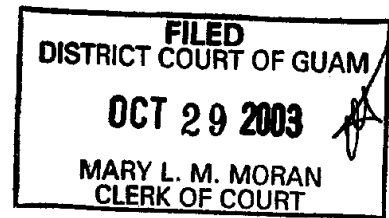


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7 IN THE DISTRICT COURT OF GUAM

8 -----
9 KAIOH SUISAN CO., LTD.

)

CIVIL CASE NO. 02-00021

10 Plaintiff,

)

11 vs.

)

DEFENDANT'S TRIAL BRIEF

12 GUAM YTK CORPORATION,

)

13 Defendant.

)

14 -----
15 **PROCEDURAL BACKGROUND**

16 This case is a fact intensive case involving a dispute regarding a purported loan
17 agreement between business partners whereby Plaintiff provided One Hundred Million Yen
18 (¥100,000,000) to the Defendant. Defendant asserts that the money was an investment into the
19 company to further the fishing venture of the parties. Plaintiff filed a Motion for Summary
20 Judgment asserting there were no factual disputes and that documents signed by the Plaintiff
21 evidenced the loan. The Motion was contested and heard by this Court on March 28, 2003. After
22 review of the pleadings and all arguments of counsel, the Court issued a written order denying the
23 Motion for Summary Judgment because Defendant raised material issues of fact as to the
relationship of the parties and the nature and meaning of the documents executed between the

ORIGINAL

1 parties. The case remains unresolved and has been set for trial beginning December 13, 2003.

2 FACTUAL CONTENTIONS

3 Plaintiff asserts that it is a Corporation organized, existing and doing business in
4 Japan which entered into an agreement to lend One Hundred Million Yen (¥100,000,000) to the
5 Defendant. Plaintiff further asserts that it transferred funds on two (2) separate occasions in the
6 amount of Fifty Million Yen (¥50,000,000) to the Defendant. Plaintiff characterizes its agreement
7 with Defendant as a loan for profit and asserts that its documents support the agreement and validate
8 it as a loan.

9 Defendant denies that a loan agreement was ever effectuated by the parties.
10 Defendant's president, Tom Kamiyama, whose signature appears on some of the documents asserts
11 that the money transferred by Plaintiff to Defendant was for an investment in their continuing fishing
12 venture and that was what the funds were used for. Some documents are in English, others in
13 Japanese. Mr. Kamiyama is illiterate in the English language. He did not prepare any of the
14 documents that Plaintiff relies upon. The content of the documents were explained to him by
15 representatives of the Plaintiff. Based upon the false representations of his Japanese business
16 partners, Mr. Kamiyama executed the documents to further the venture. However, the documents
17 were never explained to Mr. Kamiyama as loan or promissory documents. Mr. Kamiyama was told
18 by Defendant's Representatives that he was signing documents necessary to memorialize the
19 investment and transfer the funds. Therefore, his execution of the documents was induced by fraud
20 committed by the Plaintiff.


21 This investment in the company whose fishing venture eventually failed does not
22 entitle Plaintiff to recover its lost investment from Defendant. However, if Plaintiff prevails on its
23 loan theory, it still is not entitled to recover from Defendant because it is a private enterprise lending

1 money to a Guam Corporation for profit. It did so without a business license. It also conducted
2 business on Guam. It was part of a fishing enterprise in which Defendant would off-load, grade and
3 send fish by air to Plaintiff in Japan.

4 11 GCA 70130(d) requires a business license by anyone engaged in commercial
5 activity. Lending money for profit is a commercial activity. As such, Plaintiff is not entitled to any
6 relief from this Court to enforce any obligation against Defendant. The exception carved out by *EIE*
7 *Guam Corporation v. The Long Term Credit Bank of Japan*, 1998 Guam 6, does not apply to
8 Plaintiff because Plaintiff is not a foreign bank subject to exemption from gross receipts taxes
9 under 11 GCA 106730. Thus, if the Court finds that the transaction was a loan it should bar Plaintiff
10 from any relief requested.

11 Respectfully submitted this 29th day of October, 2003.

12 **TEKER CIVILLE TORRES & TANG, PLLC**

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14 By: 
15 **PHILLIP TORRES**
16 *Attorneys for Defendant*

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